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In re Application of	:	DECISION
Clinton W. Pike et al	:	
Application No.: 10/088,291	:	
PCT No.: PCT/US00/25907	:	ON PETITION
Int. Filing Date: 21 September 2000	:	
Priority Date: 24 September 1999	:	
Attorney's Docket No.: ASH 116 P2	:	UNDER 37 CFR 1.47(a)
For: MASONRY, MORTAR, AND STUCCO	:	
CEMENT COMPOSITIONS	:	

This decision is in response to applicant's "PETITION UNDER 37 CFR §1.47(a)" filed on 29 July 2002 to accept the above-captioned application without the signature of the non-signing joint inventor- Clinton W. Pike. The requisite \$130 petition fee has been charged to petitioner's Deposit Account No.: 02-2262.

BACKGROUND

On 21 September 2000, applicant filed international application PCT/US00/25907, which claimed an earliest priority date of 24 September 1999. A copy of the international application was transmitted to the United States from the International Bureau on 05 April 2001. A Demand electing the US was filed within 19 months from the priority date.

On 14 March 2002, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, inter alia, the requisite basic national fee as required by 35 U.S.C. 371(c)(1). No executed oath or declaration was submitted at such time.

On 22 May 2002, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance 37 CFR 1.497(a) and (b) is required. The notification set two months time limit or 32 months from the priority date for the application, whichever is later to respond.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(h), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

Applicants have satisfied requirements (1), (3), and (4) of 37 CFR 1.47(a). However, requirement (2) has not been satisfied.

Section 409.03(d) of the Manual of Patent Examining Procedure (M.P.E.P.) **Proof of Unavailability or Refusal**, the relevant sections states, in part:

“...Where a refusal of the inventor to sign the application paper is alleged, the circumstances of the refusal must be specified in an affidavit or declaration by the person to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

Before a refusal can be alleged, it must be demonstrated that a *bona fide* attempt was made to present a copy of the application papers (specification, including claims, drawings and oath or declaration) to the nonsigning inventor for signature.

When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the affidavit or declaration. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the affidavit or declaration.

When it is concluded by the 37 CFR 1.47 applicant that a nonsigning inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in an affidavit or declaration. If there is documentary evidence to support facts alleged in the affidavit or declaration, such evidence should be submitted. Whenever a nonsigning inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the affidavit or declaration.”

In this case, it has not been sufficiently demonstrated that a copy of the application papers were presented to the nonsigning inventor. Petitioner asserts that a declaration was first sent to Mr. Pike on 12 March 2002 and a second and final attempt to obtain his signature was made on 29 May 2002 and that the declaration was not returned. The documents forwarded to Mr. Pike, however, did not include a copy of the application papers (specification, including claims, drawings, and oath or declaration) as required under MPEP 409.03(d).

Accordingly, the current record does not support the premise that Mr. Pike' conduct constitutes refusal because a *bona fide* attempt was not made to present a copy of the application papers (specification, including claims, drawings and declaration) to Mr. Pike for his signature.

Consequently, the petition does not include sufficient proof that Mr. Pike refused to sign the required document.


CONCLUSION


The petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration of the merits of the petition under 37 CFR 1.47(a) is desired, applicant must file a request for reconsideration within **TWO (2) MONTHS** from the mail date of this Decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." Extensions of time are available under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Commissioner for Patents, Office of PCT Legal Administration, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office

Applicant is advised that, effective May 1, 2003, the Office is changing its correspondence address. Any further correspondence with respect to this matter deposited with the United States Postal Service on or after May 1, 2003 should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.


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